

## REMARKS

Claims 1-6, 8-29, and 31-38 are pending in the application and are currently rejected. Claims 1, 17, 18, 21, and 27 have been amended, claim 4 has been canceled, and claim 39 has been added. Claim 18 has been amended to correct a typographical error. Reconsideration is requested.

The Examiner rejected claims 1, 2, 11 and 36 under 35 U.S.C. §103(a) as being unpatentable over von Oepen (U.S. Pat. No. 6,652,573) in view of Ehr et al. (U.S. Pat. No. 6,033,433). Applicant respectfully traverses this rejection. Assuming *arguendo* that these two references are combinable, all of the claim limitations are not taught or suggested in either reference. As amended, claim 1 specifically claims a bounded aperture "having a major axis and a minor axis, with the major axis disposed generally transverse to the stent longitudinal axis." The aperture within the spiral shown in Ehr at FIG. 25 is circular and therefore, does not have a major axis disposed generally transverse to the stent's longitudinal axis. Since all of the claim limitations of claim 1 are not found within the references cited by the Examiner, claim 1 and those claims depending from claim 1 are allowable over the prior art.

Further, it would not be an obvious design choice to change the shape of the bounded aperture in Ehr to a shape that includes a portion that is disposed transverse to the longitudinal axis of the stent. There are several advantages to creating a link with an aperture that has a portion transverse to the stent's longitudinal axis. As stated in the current application at page 13, lines 21 through 26, the "advantage of the present invention resides primarily in having a portion or portions of the connecting link disposed transverse to the stent's longitudinal axis. Thus, whether the link is in tension, compression, or bending, the transverse portion of the link creates

greater leverage and thus greater stress on the link, allowing it to flex more easily than other stents." For these reasons, claim 1 is allowable over the prior art.

Claims 3, 4, 5 and 6 have also been rejected under 35 U.S.C. §103(a) as being unpatentable over von Oepen in view of Ehr. The Examiner states that it is an obvious design choice to change the shape of the bounded aperture of von Oepen. Applicant respectfully disagrees. Claims 3-6 recite that the bounded aperture is in the shape of an ellipse, a dog bone, or a rectangle. All of these shaped include a major axis and a minor axis, wherein the major axis is perpendicular or transverse to the longitudinal axis of the stent. As already stated, the advantage of the present invention resides in the design of the bounded apertures, that they include a portion (major axis) that is transverse to the stent's longitudinal axis. If the Examiner disagrees with this position, Applicant requests that the Examiner provide a reference showing that it is an obvious design choice to change the shape of the bounded aperture. The arguments made above with respect to the patentability of the claim 1 over von Oepen in view of Ehr, are reasserted here. For all of these reasons, claims 3, 4, 5 and 6, which depend from claim 1, are also patentable over von Oepen in view of Ehr

Claims 12, 13, 17, 18, 24, 25, 37 and 38 have been rejected under 35 U.S.C. §103(a) as being unpatentable over von Oepen in view of Ehr as applied to claims 1, 2, 8, 10, 11 and 36 above, and further in view of Frantzen (U.S. Pat. No. 5,843,175). With respect to claims 12 and 13, which depend from claim 1, the arguments made above with respect to the patentability of the claims over von Oepen in view of Ehr, are reasserted here. Frantzen also does not disclose an aperture that has a major axis disposed generally transverse to the stent's longitudinal axis, and therefore, claims 12 and 13 are allowable.

Independent claim 17 includes the limitation that at least one link includes "a major axis of the bounded aperture disposed generally perpendicular to the stent longitudinal axis." None of the cited references, including Frantzen, disclose a link having an aperture with a major axis that is disposed generally perpendicular to the stent's longitudinal axis. Therefore, claims 17, 18, 24, 25, 37 and 38 are patentable over von Oepen in view of Ehr and further in view of Frantzen.

Claim 19 has been rejected under 35 U.S.C. §103(a) as being unpatentable over von Oepen in view of Ehr, and further in view of Frantzen. The arguments made above with respect to the patentability of the claim 17 over von Oepen in view of Ehr and further in view of Frantzen are reasserted here. Again, the Examiner states that it is an obvious design choice to change the shape of the bounded aperture von Oepen. Applicant reasserts the argument made above stating reasons why changing the shape of the bounded aperture is not an obvious design choice. Applicant requests that the Examiner provide a reference showing that it is an obvious design choice to change the shape of the bounded aperture. Claim 19, which depends from claim 17, is patentable over von Oepen in view of Ehr and further in view of Frantzen.

Claims 8, 9, 10, 14, 20, 22 and 23 have been rejected under 35 U.S.C. §103(a) as being unpatentable over von Oepen in view of Ehr as applied to claims 1, 2, 8, 10, 11 and 36, and further in view of Fischell et al. (U.S. Pat. No. 6,190,403). The arguments made above with respect to the patentability of the claim 1 over von Oepen in view of Ehr, and the argument made above with respect to the patentability of claim 17 over von Oepen in view of Ehr and further in view of Frantzen, are reasserted here. Fischell also does not disclose all the limitations of independent claims 1 or 17, specifically, that at least one link includes an aperture with a major axis disposed transverse to or disposed generally perpendicular to the stent's longitudinal axis. Therefore, claims 8, 9, 10 and 14, which depend from claim 1, are patentable over these cited

references, and claims 20, 22 and 23, which depend from claim 17, are also patentable over these cited references.

Claims 15 and 16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over von Oepen in view of Ehr as applied to claims 1, 2, 8, 10, 11 and 36, and further in view of Ogi et al. (U.S. Pat. No. 5,925,061). All the arguments made above with respect to the patentability of the claims over von Oepen in view of Ehr, are reasserted here. For these reasons, claims 15 and 16, which depend from claim 1, are therefore patentable over the cited references.

Claim 21 has been rejected under 35 U.S.C. §103(a) as being unpatentable over von Oepen in view of Ehr, further in view of Frantzen as applied to claims 12, 13, 17, 18, 24, 25, 37 and 38, and further in view of Fischell. These references do not disclose all the limitations of independent claim 21, specifically, that at least one link includes an aperture with "a major axis disposed generally perpendicular to the stent longitudinal axis." Also, as previously argued, it would not have been obvious to change the shape of the aperture disclosed in the prior art references. All arguments made above with respect to the patentability of the claims over von Oepen in view of Ehr, further in view of Frantzen and/or Fischell are reasserted here. For these reasons, claim 21 is patentable over these cited references.

Claim 26 has been rejected under 35 U.S.C. §103(a) as being unpatentable over von Oepen in view of Ehr, further in view of Frantzen as applied to claims 12, 13, 17, 18, 24, 25, 37 and 38, and further in view of Rolando et al. (EP 0 806 190). The arguments made above with respect to the patentability of claim 17 are reasserted here. Claim 26 depends from claim 17 and is therefore also patentable over the cited references.

Claims 27, 28, 31, 34, 35 and 38 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Penn et al. (WO 97/32543) in view of Ogi, and further in view of Frantzen.

Applicant respectfully traverses this rejection. Assuming *arguendo* that these references are combinable, all of the claim limitations are not taught or suggested in either reference. Claim 27 specifically claims a bounded aperture "being defined in part by two aperture defining link portions, which form a major axis of the aperture that is disposed generally perpendicular to the stent longitudinal axis." The aperture disclosed in Ogi is leaf-spring like member that has major axis disposed parallel to the stent's longitudinal axis, and not perpendicular as recited by the claim. Further, as previously discussed above, it would not have been obvious to change the shape the aperture. Since all of the claim limitations of claim 27 are not found within the references cited by the Examiner, claim 27 and those claims depending from claim 27 are allowable over the prior art. Claim 38 depends from claim 1 and is therefore also allowable.

Claim 29 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Penn et al. (WO 97/32543) in view of Ogi, and further in view of Frantzen, further in view of Fischell. Applicant reasserts the arguments made above relating to the patentability of the claims over Penn in view of Ogi and further in view of Frantzen. Claim 29 depends indirectly from claim 27, and is therefore also patentable over the cited references.

Claims 32 and 33 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Penn et al. (WO 97/32543) in view of Ogi, and further in view of Frantzen, further in view of Rolando. Applicant reasserts the arguments made above relating to the patentability of claim 27 over Penn in view of Ogi and further in view of Frantzen. For these reasons, claims 32 and 33, which depend from claim 27, are patentable over the cited references.

Applicant has added new claim 39, which depends from claim 1, and is therefore also patentable over the cited references.

CONCLUSION

In view of the foregoing, applicant respectfully submits that all pending claims are in condition for allowance. Reexamination and reconsideration of the application are respectfully requested and allowance at an early date is solicited.

Respectfully submitted,

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